

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,)
)
 Plaintiff,)
)
 v.) Civ. No.: CV-08-HGD-2281-S
)
 U.S. COMMODITY FUTURES)
 TRADING COMMISSION,)
)
 Defendant.)

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S
MOTION TO DISMISS FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES**

Exhibit 1 Declaration of Stacy Easter (with attached Exhibit A and Exhibit B)
Exhibit A, Plaintiff's Emailed FOIA Requests;
Exhibit B, CFTC Response to FOIA Request, dated 6 Nov 2008.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,)
Plaintiff,)
v.)
U.S. COMMODITY FUTURES)
TRADING COMMISSION,)
Defendant.)
Civ. No.: CV-08-HGD-2281-S

DECLARATION OF STACY EASTER

I, Stacy Easter, declare as follows:

1. I am a Paralegal Specialist with the Commodity Futures Trading Commission (“CFTC”) and am responsible for processing Freedom of Information Requests received by the CFTC. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could competently testify to the matters contained in this Declaration.
2. On September 12, 2008, I received several emails from Ms. Kelly Brennan, an attorney with Balch & Bingham (“Balch”) seeking information under FOIA. After receiving the first dozen or so emails, I received a telephone call from Ms. Brennan, asking me if I had received the first several requests. I responded that I had received them. Ms. Brennan informed me that she would be submitting several more email requests over the next few days and that she would probably send the final request the following week. Ms. Brennan asked whether the agency would wait until receiving the final email before starting to process the requests. I responded that I would wait to process the requests

until I had received the entire request. Ms. Brennan's several email requests are attached as Exhibit A.

3. The FOIA requests asked for information that had previously been submitted to the CFTC by Dynegy Marketing and Trade ("Dynegy") and El Paso Merchant Energy ("El Paso") in response to investigative requests by the CFTC.
4. On September 16, 2008, I forwarded Ms. Brennan's requests to the pertinent divisions within the CFTC that might have responsive information, primarily the CFTC's Division of Enforcement.
5. On Sept 22, I learned from the Division of Enforcement at the CFTC's New York office that there were ongoing criminal proceedings being handled by the U.S. Attorney's office in Texas involving El Paso, and also that El Paso and Dynegy had previously requested confidential treatment for the materials being requested by Balch. The CFTC maintains a file of all such Requests for Confidential Treatment. I searched the file and located a 2003 Request for Confidential Treatment from El Paso. I made several phone calls to El Paso to ascertain whom I should speak with about this request and eventually received a call from Stuart Plunkett, an attorney with the law firm of Morrison Foerster. Mr. Plunkett informed me that his firm represented El Paso and that El Paso would like certain of its documents to be kept confidential. I received an email on September 26, 2008 from Mr. Plunkett confirming our telephone call.
6. On September 29, 2008, I received a response the Division of Enforcement's Washington, DC office stating that it did not have any documents responsive to Balch's FOIA request. On September 29, 2008, I also received information indicating that the Division of Enforcement's New York office had located responsive information for both

El Paso and Dynegy, but that all of the information (consisting of six CDs and thousands of pages of documents) should be withheld pursuant to FOIA Exemptions 7(b) and 7(e).

7. On October 2, 2008, I received a response from the Division of Enforcement's Chicago office stating that it had located 997 pages of responsive documents, but that material should be withheld pursuant to FOIA Exemptions 3, 5 and 7(a).
8. On October 3, 2008, I inquired of the Division of Enforcement as to whether it was granting El Paso's Request for Confidential Treatment and requested more specificity as to the asserted basis for withholding the responsive information located by that office.
9. On October 6, 2008, I received a response from the Division of Enforcement stating (1) that it was not simply granting the Request for Confidential Treatment based on the 2003 request, and (2) that the Division of Enforcement would like additional information from El Paso before making a determination whether to grant the Request for Confidential Treatment.
10. On October 6, 2008, I sent a letter via email to Mr. Plunkett at Morrison & Foerster informing him of the FOIA request and asking that he submit a detailed written justification stating why the agency should continue to grant confidential treatment to the documents requested by Balch.
11. On October 13, 2008, I called the attorney for Dynegy, Mr. Michael Kass at Pillsbury Winthrop, and told him that the CFTC had received a FOIA request seeking the same information that had been requested in an earlier FOIA request by a different party. I informed Mr. Kass if he did not want us to use his prior Detailed Written Justification, submitted on October 13, 2008, he would be required to submit a new one and asked that we rely on the earlier justification.

12. I received El Paso's Detailed Written Justification on October 20, 2008. I forwarded both Detailed Written Justifications to the Division of Enforcement's New York office so that it could make a determination as to whether to grant the Requests for Confidential Treatment.
13. On November 5, 2008, I received a phone call from Ms. Brennan inquiring about the status of Balch's requests. I informed her of the status and told her about the Requests for Confidential Treatment. She asked if the CFTC had any information that was not subject to the Requests for Confidential Treatment that the CFTC could send to Balch.
14. On November 6, I sent the CFTC's partial response to Balch's FOIA request to Ms. Brennan via email and included copies of the detailed written justifications from Dynegy and El Paso. This response is attached as Exhibit B.
15. I received an email from Joe Rosenberg confirming the ongoing Texas criminal proceeding on November 19, 2008.
16. On December 4, 2008, I received information from the Division of Enforcement (1) confirming that the responsive documents would be withheld pursuant to FOIA Exemptions 3, 4, and 7; and (2) advising that the Division of Enforcement had decided to grant both Dynegy's and El Paso's Requests for Confidential Treatment.
17. On December 10, 2008, I sent letters to both Dynegy and El Paso regarding the CFTC's decision to grant their requests for confidential treatment of their documents. I also sent a final response to Ms. Brennan denying the remainder of Balch's FOIA request.
18. On January 8, 2009, I received via email a copy of Balch's administrative appeal.

Pursuant to 28 U.S.C. §1736, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1st day of February, 2008.



Stacy Easter

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S
MOTION TO DISMISS FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES**

Exhibit A to Declaration of Stacy Easter --- Plaintiff's Emailed FOIA Requests

08-0141

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 3:31 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 15:30:38

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

EPME reported false natural gas information, including price and volume information about natural gas cash transactions it purportedly made, to certain reporting firms and thereby attempted to manipulate the natural gas market.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan, Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 3:40 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 15:39:44

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Engery, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

EPME knowingly reported non-existent trades to the reporting firms while at the same time withholding information about actual trades it made from the reporting firms. EPME did so in an attempt to skew those indexes to Respondent's financial benefit.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 3:43 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 15:43:18

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Engery, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

EPME did not maintain certain required records concerning the information it provided to the reporting firms as required by Commission regulations.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 3:46 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 15:46:01

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

EPME initiated an internal investigation by hiring an independent law firm to conduct a timely investigation relating to false reports to price gathering and reporting services.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 3:53 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 15:53:22

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

From at least June 2000 through November 2001, Respondents provided false reports to the reporting firms and failed to keep copies of required reports.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 4:10 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 16:09:40

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

The false reports included altering price and volume of actual trades and reporting non-existent trades using telephones, faxes, and the internet.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 4:24 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 16:24:13

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

Respondent's employees provided false trade data because they believed that it benefited their trading positions or derivatives contracts.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 4:35 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 16:35:27

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

Respondents also failed to report actual trades to the reporting firms.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 4:43 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 16:43:17

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

Respondents violated 9(a)(2) of the Act when its employees knowingly delivered false price and volume information, including non-existent trades, to the reporting firms.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 4:46 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 16:45:49

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

Respondents specifically intended to report false or misleading or knowingly inaccurate market information concerning, among other things, trade prices and volume of trading, and failed to report actual market information in an attempt to manipulate the price of natural gas and interstate commerce.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 4:54 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 16:53:56

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

Respondent's provision of the false reports and failure to report actual trades constitute overt acts and furtherance of the attempted manipulation.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 4:56 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 16:56:17

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

By failing to keep the required records, including records of what EPME relayed to the reporting firms, EPME violated Commission Regulations 1.31, 1.35 and 1.40.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 5:04 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 17:03:48

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relating to interview reports of current and former EPME traders provided to the Commission staff by EPME

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

_4_city: Birmingham

_4_state: AL

_4_zip: 35201-0306

fax: 205-488-5828

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 5:20 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 17:19:52

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All analysis and trading data provided to the Commission staff by EPME, which detailed all reported and all actual trades in the natural gas markets

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

4_city: Birmingham

4_state: AL

4_zip: 35201-0306

fax: 205-488-5828

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 5:33 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 17:32:33

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All e-mails and audio recordings provided by EPME to the Commission staff

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

4_city: Birmingham

4_state: AL

4_zip: 35201-0306

fax: 205-488-5828

phone: 205-226-3475

Easter, Stacy

From: kbrennan@balch.com
Sent: Friday, September 12, 2008 5:34 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Friday, September 12, 2008 at 17:34:05

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All testimony or interview notes relating to EPME's senior risk manager's explanation of EPME's risk management operations

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

_4_city: Birmingham

_4_state: AL

_4_zip: 35201-0306

fax: 205-488-5828

phone: 205-226-3475

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 10:59 AM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 10:58:47

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

From at least January 2000 through June 2002 (the relevant period), Respondents reported false natural gas trading information, including price and volume information, to certain reporting firms.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 11:03 AM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 11:03:07

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Dynegy Marketing and Trade knowingly submitted the false information to the reporting firms in an attempt to skew those indexes to Dynegy Marketing and Trade's financial benefit.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 11:07 AM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 11:07:15

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

In an effort to ensure that its reported information would be used by the reporting firms, Dynegy Marketing and Trade caused respondent West Coast Power to submit information misrepresenting that West Coast Power was a counter-party to the fictitious trades.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 11:25 AM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 11:25:09

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Dynegy Marketing and Trade did not maintain required records concerning the information which it provided to the reporting firms or the true source of the information relayed to those firms as required by Commission regulations.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 11:38 AM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 11:37:31

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

From at least January 2000 through June 2002, Respondents provided false reports to the reporting firms and failed to keep copies of required reports.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 12:03 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 12:02:49

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

The false reports included altering price and volume of actual trades and reporting non-existent trades using the phones, faxes, and the internet.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 12:11 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 12:11:26

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Respondents continued to provide the false trade data because they believed that it benefited their trading positions to derivatives contracts.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 12:18 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:17:54

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Dynegy Marketing and Trade enlisted West Coast Power to give an appearance of propriety to the false data.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 12:33 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 12:32:44

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

During the relevant period for example, as relayed in a Dynegy Marketing and Trade e-mail, a Dynegy Marketing and Trade employee established the following procedure:

Enron owns the index. Unless we start increasing our volumes we are going to continue to take the pain on the cash index. I will get you the contact for [the reporting firm]. I would suggest representing yourself as [W]est [C]oast [LLC] . . . we can show offsetting transactions on our activity.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 12:36 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 12:35:49

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Respondents' dual submission of the false information to the reporting firms was designed to elude detection from the reporting firms by showing trades with an actual counterparty.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 12:41 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 12:41:07

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Respondents violated 982 of the Act when they knowingly delivered false price and volume information, including fictitious trades, to the reporting firms.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 12:55 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 12:55:21

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Respondents specifically intended to report false or misleading or knowingly inaccurate market information concerning, among other things, trade prices and volumes, to manipulate the price of natural gas in the interstate commerce.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 2:35 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 14:35:16

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Respondents provision of the false reports and their collusion, which was designed to thwart the reporting firms detection of the false information, constitutes overt acts and furtherance of the attempted manipulation.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 2:44 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 14:43:59

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

Dynegy Marketing and Trade, a non-clearing NYMEX member, failed to keep records required of members of the contract market, including the records of what Dynegy Marketing and Trade relayed to the reporting firms.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com; or by telephone at (205) 226-3475.

4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 2:50 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 14:49:43

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the Order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions, in the matter of Dynegy Marketing and Trade and West Coast Power, LLC, CFTC Docket No.: 03-03, pending before the Commodities Futures Trading Commission:

By failing to keep the required records, including records of what Dynegy Marketing and Trade relayed to the reporting firms, Dynegy Marketing and Trade violated Commission Regulations 1.31, 1.35 and 1.40.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

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firm: Balch & Bingham LLP

4_address1: P.O. Box 306

Easter, Stacy

From: kbrennan@balch.com
Sent: Monday, September 15, 2008 2:52 PM
To: FOIAsubmissions
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by (kbrennan@balch.com) on Monday, September 15, 2008 at 14:52:13

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03.

All documents and/or information relating in any way to Dynegy Marketing and Trade's independent internal investigation including, without limitation, the results of that investigation together with all supporting documents provided to the Commission staff by Dynegy Marketing and Trade and/or West Coast Power, LLC.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

_4_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

_4_address1: P.O. Box 306

_4_city: Birmingham

_4_state: AL

_4_zip: 35201-0306

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S
MOTION TO DISMISS FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES**

Exhibit B to Declaration of Stacy Easter ---
CFTC Response to FOIA Request, dated 6 Nov 2008



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre

1155 21st Street, NW, Washington, DC 20581

Telephone: (202) 418-5105

Facsimile: (202) 418-5124

FOIA
Compliance Office

November 6, 2008

Kelly Brennan, Esq.
Balch & Bingham LLP
P.O. Box 306
Birmingham, AL 35201-0306

FOIA No.: 08-0141

RE: All documents relied upon by the CFTC regarding various statement(s) made in the Order Instituting Proceedings Making Findings and Imposing Remedial Sanctions in CFTC docket no.: 03-09 and 03-03 (re: Dynegy & El Paso).

Dear Ms. Brennan:

This letter is in partial response to your September 15, 2008, Freedom of Information Act request for the above information.

Staff of the Division of Enforcement has identified material responsive to your request and has determined that your request should be denied in total. Nine hundred and ninety-seven pages consisting of internal memoranda and e-mails are being withheld pursuant to exemption 3 of the Freedom of Information Act, 5 U.S.C. § 552 (b)(3), pertaining to material specifically exempted from disclosure by statute (Section 8(a) of the Commodity Exchange Act, 7 U.S.C. § 12); exemption 5, 5 U.S.C. § 552(b)(5), pertaining to interagency or intra-agency memos or letters, which would not be available by law to a party other than an agency in litigation with the agency; and exemption 7 of the Act, 5 U.S.C. § 552 (b)(7)(A), pertaining to records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with pending enforcement proceedings.

Please be advised that Commission staff has identified additional material that is subject to petition for confidential treatment pursuant to Section 145.9 of the Commission's regulations. In accordance with Section 145.9(d)(7), the submitters (Dynegy Inc. & El Paso Merchant Energy LP) of the confidential treatment requests were notified that a Freedom of Information Act request for the material had been received and had been asked to submit a detailed written justification in support of their confidential treatment request. We have received the justifications (attached) and staff is currently reviewing them to determine whether the request for confidential treatment should be granted or denied. You will be promptly notified when staff has made its determination.

Once the confidential treatment process is resolved, you may, if you wish, file an appeal

for access to information denied you by this letter. Please do not file your appeal until you receive a final response to your request. Your appeal must be in writing and must contain a statement of the grounds upon which you are basing your appeal. Please refer to the FOIA number that has been assigned to this request (FOIA No. 08-0141). Your appeal should be addressed: Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8th Floor, 1155 - 21st Street, N.W., Washington, D.C. 20581. Please send a copy of your appeal to the FOIA Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 8th Floor, 1155 - 21st Street, N.W., Washington, D.C. 20581. Questions concerning the processing of an appeal should be directed to the Office of the General Counsel at (202) 418-5120.

Please direct any questions you may have regarding the initial processing of your request to me at (202) 418-5011 or seaster@cftc.gov.

Sincerely,


Stacy J. Easter
Paralegal Specialist